

REMARKS

Responsive to the Final Office Action dated August 5, 2004, Claims 1 and 6 have been amended. Accordingly, Claims 1, 2, 4-7 and 9-12 are currently pending for prosecution with Claims 1 and 6 being independent.

I. Claim Rejections Under 35 U.S.C. § 112

Claims 1-2, 4-7 and 9-12 were rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. In particular, it was asserted that the specification does not provide support for the composition A-B-C containing 5 to 48% of the second element B because at page, lines 14-17, of the specification it states that the second element is 5 to 50% by weight. Applicant has amended independent Claims 1 and 6 to recite that the composition A-B-C preferably contains from about 5 to 40% by weight of second element B. Support for this preferred range is found in the specification at page 6, line 5. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

II. Claim Rejections Under 35 U.S.C. § 102

Claims 1-2, 4-7 and 9-12 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,432,585 to Kawakami. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Applicant respectfully submits that Kawakami does not anticipate Applicant's invention as claimed because Kawakami fails to teach every element and limitation of the claims at issue. In particular, Kawakami fails to disclose a negative electrode active material of the composition A-B-C wherein the second element B is silicon or tin and present in an amount of from about 5 to 40% by weight. It is asserted in the Office Action that Takami discloses at column 52, lines 50-60, that the second element tin is present in an amount of 10 atomic % which embraces a weight presence of 5 to 48%. Applicant respectfully submits that this citation does not state that

tin is present in an amount of 10 atomic %. Rather, this citation states: "Tin powder of 20 μ m in average particle size was immersed in an aqueous solution of bismuth chloride and copper chloride, where the tin (Sn) components of the tin powder were partially substituted by Bi and Cu . . . As a result, the tin powder thus treated was found to contain **Bi and Cu** respectively in an amount of about 10 atomic %." (emphasis added). Thus, it is the bismuth and copper content that is present in an amount of 10 atomic % and *not* tin.

Kawakami therefore clearly does not teach a second element content of 5 to 40% by weight. Because Kawakami does not teach all of the elements of Applicant's Claims 1-2, 4-7, and 9-12, it cannot therefore anticipate the invention as claimed.

III. Conclusion

Applicant respectfully requests withdrawal of the rejections and believes that the claims, as amended, are now in condition for allowance. However, if the Examiner desires, Applicant is ready for a telephone interview to expedite prosecution. As always, the Examiner is free to call the undersigned at 816.460.2516. Should any fees be necessitated by this response, the Commissioner is hereby authorized to deduct any such fees from Deposit Account No. 19-3140.

Respectfully submitted,

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